

1 SENATE BILL 407

2 **47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

3 INTRODUCED BY

4 Michael S. Sanchez

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10 AN ACT

11 RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN  
12 ENERGY ACT; PROVIDING FOR DISTRIBUTION OF PROCEEDS FROM THE OIL  
13 AND GAS CONSERVATION TAX; CREATING A BOARD; CREATING FUNDS;  
14 AUTHORIZING THE ISSUANCE OF BONDS; MAKING AN APPROPRIATION.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
18 through 10 of this act may cited as the "Land, Wildlife and  
19 Clean Energy Act".

20 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
21 Land, Wildlife and Clean Energy Act:

22 A. "authority" means the New Mexico finance  
23 authority;

24 B. "board" means the land, wildlife and clean  
25 energy board;

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1 C. "clean energy development project" means a  
2 project that increases:

- 3 (1) energy efficiency;  
4 (2) the conservation of energy; or  
5 (3) the production of energy using biomass,  
6 geothermal, hydrogen, solar or wind power;

7 D. "conservation project" means acquisition of  
8 land, water and water rights, or interests in land, water and  
9 water rights to treat, preserve, restore or enhance wildlife  
10 habitat, natural areas, outdoor recreation areas and trails,  
11 forests or working farms and ranches; "conservation project"  
12 also means a wildlife management project;

13 E. "department" means the energy, minerals and  
14 natural resources department;

15 F. "director" means the director of the board;

16 G. "Indian tribe" means a federally recognized  
17 Indian nation, tribe or pueblo located wholly or partially in  
18 New Mexico; a governmental unit or wholly owned enterprise of  
19 such an Indian nation, tribe or pueblo; and a consortium of  
20 those Indian tribes, nations, pueblos or entities;

21 H. "public or private conservation agency" means a  
22 governmental body or a private not-for-profit charitable  
23 corporation or trust authorized to do business in New Mexico  
24 that is organized and operated for natural resources or land  
25 conservation purposes and that has tax-exempt status as a

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1 public charity under the federal Internal Revenue Code of 1986,  
2 and the power to acquire, hold or maintain land or interests in  
3 land;

4 I. "public or private clean energy agency" means a  
5 governmental body or a private not-for-profit charitable  
6 corporation or trust authorized to do business in New Mexico  
7 that is organized and operated to promote clean energy  
8 development and that has tax-exempt status under the federal  
9 Internal Revenue Code of 1986; and

10 J. "qualified entity" means a state agency,  
11 political subdivision of the state, Indian tribe, school  
12 district, state educational institution named in Article 12,  
13 Section 11 of the constitution of New Mexico and a public or  
14 private conservation or clean energy development agency.

15 Section 3. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
16 BOARD CREATED--APPOINTMENTS--TERMS.--

17 A. The "land, wildlife and clean energy board" is  
18 created and is administratively attached to the department.

19 B. The board consists of nine members as follows:

20 (1) the secretary of energy, minerals and  
21 natural resources or the secretary's designee;

22 (2) the director of the New Mexico department  
23 of agriculture or the director's designee;

24 (3) the director of the department of game and  
25 fish or the director's designee; and

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1 (4) six public members appointed by the  
2 governor with the advice and consent of the senate, with one  
3 representative each having expertise in the following:

- 4 (a) wind and solar energy;
- 5 (b) energy conservation and efficiency;
- 6 (c) producing farms and ranches;
- 7 (d) municipalities and counties;
- 8 (e) natural area protection; and
- 9 (f) wildlife management and  
10 conservation.

11 C. Appointed members of the board shall serve  
12 staggered terms of four years; provided that at the time of  
13 making the first appointments, the governor shall designate  
14 one-half of the appointed board members' first terms as being  
15 two years and one-half of the members' first terms as being for  
16 four years so that the term of no more than three appointed  
17 members' terms will expire at the same time. The governor  
18 shall appoint the chair of the board. A vacancy on the board  
19 shall be filled for the remainder of the term of that  
20 appointee. Appointed members of the board shall receive  
21 reimbursement for expenses incurred in the performance of their  
22 duties pursuant to the Per Diem and Mileage Act and shall  
23 receive no other compensation, perquisite or allowance.

24 Section 4. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
25 BOARD--POWERS--DUTIES.--

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1           A. The board shall employ a director, who shall  
2 hire personnel and contract for services necessary to carry out  
3 the purposes of the Land, Wildlife and Clean Energy Act. The  
4 director shall develop and implement plans and a budget as  
5 directed by the board. The department shall be reimbursed for  
6 costs incurred for any administrative support provided to the  
7 board and the director. The board shall have an independent  
8 audit of the board's finances conducted annually.

9           B. The board shall promulgate rules for  
10 environmental assessment and certification of eligible projects  
11 to be funded pursuant to the Land, Wildlife and Clean Energy  
12 Act.

13           C. The board may fund projects that:

14                   (1) maintain an appropriate balance in the  
15 funding of conservation projects and clean energy development  
16 projects over time;

17                   (2) directly protect or conserve land or  
18 wildlife or increase clean energy development;

19                   (3) support the maintenance of private  
20 ownership of working farms and ranches;

21                   (4) assist private landowners in conservation  
22 of land and wildlife;

23                   (5) will directly receive financial or in-kind  
24 support from existing or new programs to protect open space and  
25 habitat, provide for recreational opportunities or increase

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1 clean energy development;

2 (6) conserve land and water in association  
3 with ecosystem or natural area protection or habitat  
4 enhancement;

5 (7) leverage other public or private  
6 investment in land, wildlife and clean energy development  
7 projects, including allowing local governments to match funding  
8 by adopting open space and agriculture protection policies;

9 (8) improve public access to land, water,  
10 wildlife and open space and recreation opportunities; or

11 (9) are carried out through the acquisition of  
12 land or water as necessary to comply with the law, but with a  
13 preference for leaving land and water in private ownership  
14 subject to easements that will ensure proper project management  
15 or public use while protecting private property rights.

16 D. The board may:

17 (1) administer the land, wildlife and clean  
18 energy fund and make grants and loans from the fund for the  
19 purposes authorized by the Land, Wildlife and Clean Energy Act;

20 (2) acquire and manage, or assign management  
21 of, whole or partial interests in land and water, including  
22 easements;

23 (3) make grants or loans to or otherwise  
24 contract with qualified entities for qualified conservation  
25 projects and clean energy development projects;

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1 (4) fund wildlife management projects;  
2 (5) promulgate rules for the management of  
3 programs and projects;

4 (6) request the authority to issue  
5 conservation bonds or clean energy bonds to finance eligible  
6 conservation projects or clean energy development projects;

7 (7) apply for, accept and expend funds from  
8 private and public sources; and

9 (8) enter into contracts or agreements with  
10 qualified entities as necessary to achieve the purposes of the  
11 Land, Wildlife and Clean Energy Act.

12 E. The board shall meet at least quarterly, review  
13 proposed conservation projects and clean energy development  
14 projects and, in consultation with the director, select those  
15 projects to be financed with money from the land, wildlife and  
16 clean energy fund or with the proceeds of bonds issued by the  
17 authority for those purposes.

18 F. The board shall issue an annual report to the  
19 legislature and the governor that includes:

20 (1) a list and description of each project  
21 funded that year and the status of any other ongoing projects;

22 (2) a summary of the board's revenues and  
23 expenses, including a combined balance sheet and statement of  
24 revenue, expenditures and changes in fund balances;

25 (3) the independent auditor's report or

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1 letter;

2 (4) a summary of the board's five-year  
3 strategy for carrying out the purposes of the Land, Wildlife  
4 and Clean Energy Act; and

5 (5) information on how qualified entities may  
6 apply for funding of eligible projects.

7 Section 5. [NEW MATERIAL] CONSERVATION PROJECTS--  
8 LIMITATIONS.--

9 A. Land, water or water rights shall not be  
10 acquired with money from the land, wildlife and clean energy  
11 fund or proceeds from bonds issued pursuant to the Land,  
12 Wildlife and Clean Energy Act through condemnation or the  
13 exercise of the power of eminent domain.

14 B. Money in the land, wildlife and clean energy  
15 fund shall not be used to acquire water or water rights that:

16 (1) are served by or owned by an acequia or  
17 community ditch established pursuant to Chapter 73, Article 2  
18 or 3 NMSA 1978;

19 (2) are served by an irrigation district  
20 established pursuant to Chapter 73, Article 10 NMSA 1978,  
21 except through contractual arrangement with the district board  
22 of directors or as a special water users association  
23 established pursuant to Chapter 73, Article 10 NMSA 1978;

24 (3) are not purchased or leased from willing  
25 sellers or lessors;

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1 (4) will result in an increase in net  
2 depletions in the affected river reach or that will create  
3 cumulative adverse impacts on existing water users or delivery  
4 systems;

5 (5) cost more than the appraised market value  
6 to purchase or lease based upon the best available information  
7 and considering the seniority and the consistent, historic  
8 beneficial use of the water or water rights;

9 (6) do not have sufficient seniority and  
10 consistent, historic beneficial use to effectively contribute  
11 to the purposes of the Land, Wildlife and Clean Energy Act;

12 (7) have not been subject to approval by the  
13 state engineer or do not comply with all state engineer rules  
14 governing surface and ground water transfer applications; and

15 (8) will not remain in their river reach or  
16 ground water basin of origin.

17 C. A conservation project that includes the  
18 purchase of land or an interest in land with a public or  
19 private conservation agency shall, to the extent required by  
20 law, require that title to the land or interest in land be held  
21 by the state or a political subdivision of the state, or by the  
22 public or private conservation agency and the state, or  
23 political subdivision of the state, as cotenants with an  
24 undivided interest in the land or interest in the land. If the  
25 public or private conservation agency fails to perform its

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1 management, monitoring or enforcement duties as they relate to  
2 a conservation project, the ownership interest of any land or  
3 interest in land purchased with state funds for that project  
4 shall revert to the state.

5 Section 6. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
6 FUND--CREATION--USE.--

7 A. The "land, wildlife and clean energy fund" is  
8 created in the state treasury and shall consist of  
9 distributions made to the fund from the conservation and clean  
10 energy bonding fund; gifts, grants and donations; other revenue  
11 credited to the fund; and income from investment of the fund.  
12 Balances in the fund at the end of a fiscal year shall not  
13 revert to the general fund. The fund shall be administered by  
14 the department.

15 B. Money in the land, wildlife and clean energy  
16 fund is appropriated to the board to make loans or grants to,  
17 or otherwise contract with, qualified entities for conservation  
18 projects and clean energy development projects as authorized by  
19 the Land, Wildlife and Clean Energy Act and to carry out the  
20 purposes of that act.

21 Section 7. [NEW MATERIAL] CONSERVATION AND CLEAN ENERGY  
22 BONDING FUND--CREATED--PLEDGE OF MONEY IN THE FUND--  
23 DISTRIBUTION.--

24 A. The "conservation and clean energy bonding fund"  
25 is created as a special fund within the authority. The fund

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1 shall be administered by the authority as a special account.  
2 The fund shall consist of oil and gas conservation tax revenues  
3 distributed to the fund by law; appropriations by the  
4 legislature to carry out the purposes of the Land, Wildlife and  
5 Clean Energy Act; and any other public or private money  
6 dedicated to the fund. Earnings of the fund shall be credited  
7 to the fund. Balances in the fund at the end of any fiscal  
8 year shall remain in the fund, except as provided in this  
9 section.

10 B. Money in the conservation and clean energy  
11 bonding fund shall be pledged irrevocably by the authority for  
12 the payment of principal and interest on conservation bonds and  
13 clean energy bonds issued pursuant to the Land, Wildlife and  
14 Clean Energy Act. Money in the fund is appropriated to the  
15 authority for the purposes of paying debt service, including  
16 redemption premiums, on the bonds and expenses incurred in the  
17 issuance, payment and administration of the bonds.

18 C. On the last day of January and July of each  
19 year, the authority shall estimate the amount needed to make  
20 debt service payments on the bonds issued pursuant to the Land,  
21 Wildlife and Clean Energy Act, plus the amount that may be  
22 needed for any required reserves, administrative expenses or  
23 obligations coming due during the next twelve months from the  
24 fund, and distribute to the land, wildlife and clean energy  
25 fund any balance in the conservation and clean energy bonding

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1 fund above the estimated amounts; provided that if there are no  
2 bonds issued or outstanding, then distributions from the oil  
3 and gas conservation tax shall be transferred to the land,  
4 wildlife and clean energy fund upon receipt by the authority.

5 D. The bonds issued pursuant to the Land, Wildlife  
6 and Clean Energy Act shall be payable solely from the fund or  
7 such other special funds as may be provided by law and do not  
8 create an obligation or indebtedness of the state within the  
9 meaning of any constitutional provision. A breach of any  
10 contractual obligation incurred pursuant to the Land, Wildlife  
11 and Clean Energy Act shall not impose a pecuniary liability or  
12 a charge upon the general credit or taxing power of the state,  
13 and the bonds are not general obligations for which the state's  
14 full faith and credit is pledged.

15 E. The state pledges that the conservation and  
16 clean energy bonding fund shall be used only for the purposes  
17 specified in this section and shall first be pledged to pay the  
18 debt service on the bonds issued pursuant to the Land, Wildlife  
19 and Clean Energy Act. The state further pledges that any law  
20 authorizing the distribution of taxes or other revenues to the  
21 fund or authorizing expenditures from the fund shall not be  
22 amended or repealed or otherwise modified so as to impair the  
23 bonds to which the fund is dedicated as provided in this  
24 section.

25 Section 8. [NEW MATERIAL] CONSERVATION BONDS AND CLEAN

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1 ENERGY BONDS AUTHORIZED.--

2 A. The authority is authorized to issue and sell  
3 from time to time bonds, known as "conservation bonds" or  
4 "clean energy bonds", at the request of the board and in  
5 compliance with the Land, Wildlife and Clean Energy Act and the  
6 New Mexico Finance Authority Act for the purpose of financing  
7 conservation projects or clean energy development projects when  
8 the board has certified the need for the bonds.

9 B. The net proceeds from the bonds are appropriated  
10 to the board for the purpose of financing conservation projects  
11 and clean energy development projects pursuant to the Land,  
12 Wildlife and Clean Energy Act.

13 C. Each series of bonds shall be issued pursuant to  
14 the provisions of the New Mexico Finance Authority Act, except  
15 as otherwise provided in the Land, Wildlife and Clean Energy  
16 Act.

17 D. The authority may additionally secure the bonds  
18 issued pursuant to this section by a pledge on the money in the  
19 public project revolving fund as determined by the authority.

20 E. The authority may purchase bonds issued pursuant  
21 to this section with money in the public project revolving fund  
22 pursuant to the provisions of Section 6-21-6 NMSA 1978.

23 Section 9. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
24 ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL  
25 INVESTMENTS.--

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1           A. The Land, Wildlife and Clean Energy Act and the  
2 New Mexico Finance Authority Act shall, without reference to  
3 any other act of the legislature, be full authority for the  
4 issuance and sale of conservation bonds and clean energy  
5 development bonds, which bonds shall have all the qualities of  
6 investment securities under the Uniform Commercial Code and  
7 shall not be invalid for any irregularity or defect or be  
8 contestable in the hands of bona fide purchasers or holders  
9 thereof for value.

10           B. Conservation bonds and clean energy development  
11 bonds are legal investments for any person or board charged  
12 with the investment of any public funds and are acceptable as  
13 security for any deposit of public money.

14           Section 10. [NEW MATERIAL] BONDS TAX EXEMPT.--All  
15 conservation bonds and clean energy development bonds shall be  
16 exempt from taxation by the state or any of its political  
17 subdivisions.

18           Section 11. Section 7-1-6.21 NMSA 1978 (being Laws 1985,  
19 Chapter 65, Section 7, as amended) is amended to read:

20           "7-1-6.21. DISTRIBUTION TO OIL AND GAS RECLAMATION FUND  
21 AND CONSERVATION AND CLEAN ENERGY BONDING FUND.--

22           A. With respect to any period for which the rate of  
23 the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-  
24 hundredths percent, a distribution pursuant to Section 7-1-6.20  
25 NMSA 1978 shall be made to the oil and gas reclamation fund in  
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1 the amount equal to two-nineteenths of the net receipts  
2 attributable to the tax imposed under the Oil and Gas  
3 Conservation Tax Act.

4 B. With respect to any period for which the rate of  
5 the tax imposed by Section 7-30-4 NMSA 1978 is eighteen-  
6 hundredths percent, a distribution pursuant to Section 7-1-6.20  
7 NMSA 1978 shall be made to the oil and gas reclamation fund in  
8 the amount equal to one-eighteenth of the net receipts  
9 attributable to the tax imposed under the Oil and Gas  
10 Conservation Tax Act.

11 C. A distribution pursuant to Section 7-1-6.20 NMSA  
12 1978 shall be made to the conservation and clean energy bonding  
13 fund in an amount equal to ten-nineteenths of the net receipts  
14 attributable to the tax imposed by the Oil and Gas Conservation  
15 Tax Act."

16 Section 12. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2006.